

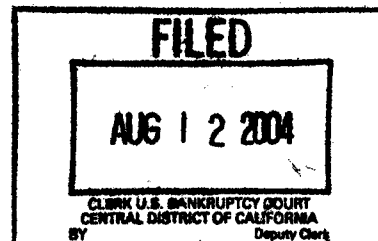
Attorney or Party Name, Address, Telephone, FAX Numbers, and California State Bar Number
HYDEE J. MULICHAK
BARRY GARDNER & KINCANNON
4400 MacArthur Boulevard #700
Newport Beach, CA 92660
949/851-9111 949/851-3935

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re: NAOMI V. MONK

Debtor(s).

COURT USE ONLY



CASE NO.:

SA03-15457-RA

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: September 9, 2004

Time: 11:30 a.m.

Location: U.S. Bankruptcy Court, Courtroom 6C, 411 West Fourth Street, Santa Ana, CA

Type of Sale: ☒ Public: ☐ Private: Last date to file objections: August 26, 2004

Description of Property to be Sold: Real property commonly known as 309 West Latham Avenue, Hemet, California 92543

Terms and Conditions of Sale: See attached Notice of Motion

Proposed Sale Price: \$30,000.00

Overbid Procedure (If Any): See attached Notice of Motion

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Clarence Yoshikane, Prudential California Realty
2405 McCabe Way #100
Irvine, CA 92614
Office 949/794-5724, mobile 714/606-5765
e-mail: yoshikane@pruoc.com

Date: August 11, 2004

Hydee J. Mulichak, Bar No. 158779
Jeffrey B. Gardner, Bar No. 115648
BARRY, GARDNER & KINCANNON
A Professional Corporation
4400 MacArthur Boulevard, Suite 700
Newport Beach, California 92660
Tel: (949) 851-9111 Fax: (949) 851-3935

Attorneys for Karen Sue Naylor,
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re	)	Case No. SA03-15457-RA
)	
NAOMI V. MONK,	)	Chapter 7
)	
Debtor.	)	NOTICE OF MOTION FOR ORDER
	)	APPROVING: (1) SALE OF THE
	)	ESTATE'S RIGHT, TITLE AND
	)	INTEREST IN REAL PROPERTY OF
	)	THE ESTATE AS IS, WHERE IS
	)	WITHOUT WARRANTIES AND
	)	REPRESENTATIONS BY AUCTION,
	)	FREE AND CLEAR OF LIENS, (2)
	)	OVERBID PROCEDURES, AND (3)
	)	DISTRIBUTION OF SALES PROCEEDS
	)	AND PAYMENT OF REAL ESTATE
	)	COMMISSIONS
)	
	)	Date: September 9, 2004
	)	Time: 11:30 a.m.
	)	Place: Courtroom 6C

TO ALL INTERESTED PARTIES HEREIN:

PLEASE TAKE NOTICE that on September 9, 2004 at 11:30 a.m.,
or as soon thereafter as the matter may be heard, in Courtroom 6C
of the above-entitled Court located at 411 West Fourth Street,
Santa Ana, California, Karen Sue Naylor, the duly appointed,
qualified and acting Chapter 7 Trustee ("Trustee"), of the above-
entitled estate ("Estate"), will move the Court for an Order

1 Approving: (1) Sale of the Estate's Right, Title and Interest in
2 Real Property of the Estate as Is, Where Is Without Warranties
3 and Representations by Auction, Free and Clear of Liens, (2)
4 Overbid Procedures, and (3) Distribution of Sales Proceeds and
5 Payment of Real Estate Commissions ("Motion").

6 On July 21, 2003, Naomi V. Monk ("Debtor"), filed a
7 voluntary petition under Chapter 7 of the Bankruptcy Code.

8 On November 19, 1998, Charles D. Neale and Teresa A. Neale
9 executed a grant deed for certain real property known as 309 West
10 Latham Avenue, Hemet, California 92543 (the Subject Property").
11 According to the grant deed, Debtor received an undivided one-
12 half interest as a tenant in common with the Charles D. Neale and
13 Teresa A. Neale. The Subject Property is a residential rental
14 property.

15 The Trustee is informed that on May 5, 1999, Charles D.
16 Neale died, and that on April 5, 2002, Teresa A. Neale died. The
17 Trustee is further informed that the Neale Estate is currently in
18 probate.

19 The Trustee is informed and believes that the Neale Estate
20 holds a one-half interest as a tenant-in-common in the Subject
21 Property. The Trustee is further informed and believes that the
22 Debtor holds a one-half interest as a tenant-in-common in the
23 Subject Property.

24 The Debtor indicated in her Schedule A that she was a
25 fifty percent (50%) tenant in common in fee of the Subject
26 Property, listing a market value of \$120,000.00 with a first deed
27 of trust in the amount of \$77,466.00 in favor of CitiMortgage,
28 Inc. ("CitiMortgage Lien"). The Debtor has sought an exemption

1 of \$6,200.00 in her Schedule C for the Subject Property.

2 Subsequently, the Trustee became aware that the Subject
3 Property was worth more than reflected in the Debtor's schedules
4 and obtained a valuation of the Subject Property in the sum of
5 \$150,000.00 to \$160,000.00 based upon the broker's price opinion
6 dated August 11, 2003, by Clarence Yoshikane, the Trustee's real
7 estate agent.

8 On or about September 16, 2003, the Debtor filed Amended
9 Schedules whereby she amended Schedule H to include the Neale
10 Estate, c/o Joel G. Schwartz, Esq., 19925 Stevens Creek
11 Boulevard, Cupertino, California 95014-2358, as a co-debtor of
12 the CitiMortgage Lien.

13 Thereafter, the Trustee then began the process of
14 negotiating with the co-owner regarding the sale of the Subject
15 Property. The Trustee understood that a settlement with the
16 Neale Estate would be beneficial and economical since without
17 their consent of the sale of the Subject Property, litigation
18 would certainly ensue. Ultimately, the Trustee arrived at an
19 agreement with the Neale Estate wherein the Subject Property
20 would be sold by the estate, and the net proceeds, after costs of
21 sale, and Trustee's attorney's fees incurred would be split with
22 the Neale Estate. A Stipulation to Sell Real Property Located at
23 309 W. Latham Avenue, Hemet, California Free and Clear of Co-
24 Owner's Interest Pursuant to Bankruptcy Code Section 363(h) and
25 For Division of Sales Proceeds and Order Thereon ("Stipulation"),
26 was entered into between the parties and approved by the Court on
27 June 9, 2004. Until this time, the Trustee was uncertain if the
28 Subject Property would benefit the bankruptcy estate as it was

1 unknown if litigation would be required with the co-owner.

2 After the Stipulation, the Trustee then obtained a revised
3 broker's price opinion wherein the value of the Subject Property
4 was placed at approximately \$285,000.00 to \$295,000.00.

5 Based upon the Trustee's valuation of the Subject Property,
6 the liens thereon, and the Debtor's claimed exemptions, the
7 Trustee determined that there was significant equity in the
8 Subject Property for the benefit of the estate and began the
9 steps to try to resolve the estate's interest in the Subject
10 Property. An application to employ Clarence Yoshikane as the
11 estate's real estate agent was served on July 2, 2004. By order
12 entered on August 6, 2004, the employment of Mr. Yoshikane was
13 approved.

14 Pursuant to the Application for Employment, Clarence
15 Yoshikane of Prudential California Real Estate shall receive a
16 commission equal to six percent (6%) of the purchase price. Mr.
17 Yoshikane will be sharing his portion of the commission with
18 another agent at Prudential who has assisted him. In no event
19 will the commission exceed 6% and Mr. Yoshikane has agreed to
20 share his commission with the broker for the ultimate buyer in
21 the amount of three percent (3%) of the Purchase Price.

22 As set forth above, the Debtor claims an exemption in the
23 Subject Property in the amount of \$6,200.00, which will be paid
24 out of escrow.

25 The Trustee has received an offer to purchase the Subject
26 Property from Silvina Gonzalez ("Buyer") for the sum of
27 \$300,000.00.

28 / / /

1 The Buyer has deposited \$15,000.00 with the Trustee as an
2 earnest money deposit for the purchase of the Subject Property.
3 A summary of the terms of the sale to Buyer as provided by the
4 Purchase Agreement are as follows:

5 1. Property to be Sold: The property to be sold includes
6 the estate's right, title and interest in the real property
7 located at 309 West Latham Avenue, Hemet, California 92543, free
8 and clear of liens, as is, where is, without warranties and
9 representations.

10 2. Purchase Price: The Purchase Price shall be
11 \$300,000.00.

12 3. Escrow Agent: The Escrow Agent will be Pickford
13 Escrow.

14 4. Title Company: The Title Company will be Fidelity
15 National Title.

16 5. Closing of Escrow: Escrow for the purchase and sale of
17 the Subject Property will close within 10 days after entry of an
18 order approving the purchase and sale, unless otherwise agreed by
19 the Trustee at her sole discretion.

20 6. Real Estate Broker's Fee: Broker's commission of
21 Clarence Yoshikane of Prudential California Realty shall be six
22 percent (6%) of the Purchase Price which shall be paid out of the
23 sale proceeds through escrow. Mr. Yoshikane will be sharing his
24 portion of the commission with another agent at Prudential who
25 has assisted him. In no event will the commission exceed 6% and
26 Mr. Yoshikane has agreed to share his commission with the broker
27 for the ultimate buyer in the amount of three percent (3%) of the
28 Purchase Price.

1 7. Sale Subject to Overbid and Court Approval: This
2 transaction is expressly subject to overbid and court approval of
3 the United States Bankruptcy Court for the Central District of
4 California, Santa Ana Division, Honorable Robert W. Alberts
5 presiding.

6 8. Rents: All rents will be prorated as of the time of the
7 date of closing of escrow between the Estate and the Buyer.

8 9. Security Deposits: The Buyer will receive a credit of
9 \$1,143.00 at escrow representing security deposits of the tenants
10 in the Subject Property at the time of closing of escrow. The
11 security deposit of any tenant that vacates the Subject Property
12 prior to closing of escrow will not be credited to the Buyer.

13 The terms of the overbid procedures include the following:

14 1. The auction of the Subject Property will occur on the
15 date of the hearing on September 9, 2004 at 11:30 a.m. in or in
16 the vicinity of Courtroom 6C of the Bankruptcy Court, conducted
17 by the Trustee and subject to the approval of the Bankruptcy
18 Court.

19 2. The initial minimum net overbid shall be \$305,000.00.

20 3. Each additional overbid shall be in a minimum of
21 increments of \$1,000.00.

22 4. Each bid must be all cash, non-contingent, and on the
23 same terms and conditions, other than price, as those proposed in
24 the current sale agreement. The successful bidder will be bound
25 to the Purchase Agreement submitted with this Motion, except the
26 following terms will be altered to provide for the overbidder:
27 name of buyer, amount of purchase price, amount of deposit, name
28 of buyer's broker, and the dollar amount brokers will receive in

1 commissions. All remaining terms in the Purchase Agreement will
2 be in full force and effect.

3 5. Any person wishing to overbid on the Subject Property
4 must be personally present at the auction. Furthermore, no later
5 than 5:00 p.m. two business days prior to the auction, such
6 potential overbidder must further present certified funds in the
7 amount of five percent (5%) of their initial bid payable to Karen
8 Sue Naylor, Chapter 7 Trustee, and must have the ability to pay
9 the remainder of the sales price within ten (10) days from the
10 date of the entry of the order of the Court approving the sale.

11 6. Any person wishing to overbid on the Subject Property
12 must provide to the Trustee and her counsel, no later than 5:00
13 p.m. two business days prior to the auction, written evidence of
14 financial worthiness showing the ability to pay for the Subject
15 Property, either through proof of available cash or through
16 written credit approval. The Trustee shall be authorized by the
17 potential overbidders to verify the information provided.

18 7. In the event there are no overbids received by the
19 Trustee at the auction, Buyer shall, subject to Court approval,
20 be deemed the successful bidder, and the estate's interest in the
21 Subject Property shall be sold to her for the sum of \$300,000.00,
22 as is, where is, without representations or warranties.

23 8. In the event Buyer is not deemed the successful
24 bidder, the Trustee releases any rights to the \$15,000.00 deposit
25 which will be promptly refunded.

26 The Trustee further seeks authority for the distribution of
27 sale proceeds as follows:

28 (1) For normal closing costs;

1 (2) To CitiMortgage, Inc. or its principal, successor or
2 assign, the holder of the first deed of trust against the Subject
3 Property, estimated at approximately \$77,466.00 pursuant to its
4 demand into escrow, and subject to the Trustee's review and
5 approval prior to distribution;

6 (3) For any delinquent property taxes on the Subject
7 Property;

8 (4) To Clarence Yoshikane of Prudential California Realty,
9 the agent for the estate, a commission of six percent (6%) of the
10 Purchase Price to be shared as set forth herein;

11 (5) All remaining sums from the sale of the Subject
12 Property after those paid from escrow as set forth above ("Sales
13 Proceeds"), shall be forwarded to the Trustee and deposited into
14 the Trustee's trust account.

15 As set forth in the Stipulation, with respect to the Neale
16 Estate, from the Sales Proceeds, the Trustee shall be entitled to
17 compensation for the expenses incurred with respect to the
18 maintenance and disposition of the Subject Property including,
19 but not limited to reasonable attorney's fees as set forth in the
20 Stipulation. After payment of expenses as set forth in the
21 Stipulation, the balance of the funds shall be deemed the "Net
22 Proceeds". Pursuant to the Stipulation, the Net Proceeds shall
23 then be divided equally between the Trustee and Neale Estate.

24 In order that escrow may close as promptly as possible, the
25 Trustee requests that the Court waive the 10-day stay provided
26 under Bankruptcy Rule 6004(g).

27 The Trustee seeks authorization to sell the Subject Property
28 free and clear of liens so that if an exorbitant demand is

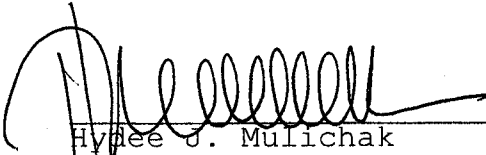
1 received from the first trust deed holder or other liens, escrow
2 can still close while the Trustee investigates the claims. The
3 lien of any entity not paid in full through escrow would attach
4 to the proceeds and, accordingly, the interest of all lienholders
5 would be adequately protected.

6 PLEASE TAKE FURTHER NOTICE that more information is
7 contained in the Motion. The Motion is being filed with the
8 Clerk of the above-entitled Court and may be reviewed Monday
9 through Friday from 9:00 a.m. to 4:00 p.m. at the United States
10 Bankruptcy Court located at 411 West Fourth Street, Santa Ana,
11 California.

12 PLEASE TAKE FURTHER NOTICE that pursuant to Local Bankruptcy
13 Rule 9013-1(1)(g), opposition, if any, to the Motion must be in
14 writing, filed with the Court and served upon all appropriate
15 parties, including Trustee's counsel not later than 14 days prior
16 to the hearing on the Motion. Failure to timely file and serve
17 objections may be deemed a waiver of the same.

18 DATED: August 11, 2004

BARRY, GARDNER & KINCANNON
A Professional Corporation


Hydee J. Mulichak
Attorneys for Karen Sue Naylor,
Chapter 7 Trustee

23 H:\6763\Pleadings\Motion to Sell\notice.wpd
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1 PROOF OF SERVICE

2 I am employed in the County of Orange, State of California.
3 I am over the age of 18 and not a party to the within action; my
4 business address is 4400 MacArthur Boulevard, Suite 700, Newport
5 Beach, California 92660.

6 On August 11, 2004, I served the foregoing document
7 described as **NOTICE OF MOTION FOR ORDER APPROVING: (1) SALE OF**
8 **THE ESTATE'S RIGHT, TITLE AND INTEREST IN REAL PROPERTY OF THE**
9 **ESTATE AS IS, WHERE IS WITHOUT WARRANTIES AND REPRESENTATIONS BY**
10 **AUCTION, FREE AND CLEAR OF LIENS, (2) OVERBID PROCEDURES, AND (3)**
11 **DISTRIBUTION OF SALES PROCEEDS AND PAYMENT OF REAL ESTATE**
12 **COMMISSIONS** on the interested parties in this action by placing a
13 true copy thereof enclosed in a sealed envelope addressed as
14 follows:

15 SEE ATTACHED SERVICE LIST

16 /X/ [BY MAIL] I am readily familiar with the firm's business
17 practice of collection and processing correspondence for
18 mailing. Under that practice, it would be deposited with the
19 U.S. Postal Service on that same day with postage thereon
20 fully prepaid at Newport Beach, California in the ordinary
21 course of business. I am aware that on motion of the party
22 served, service is presumed invalid if postal cancellation
23 date or postage meter date is more than one day after date
24 of deposit for mailing in affidavit.

25 /X/ [FEDERAL] I declare that I am employed in the office of a
26 member of the bar of this court at whose direction the
27 service was made.

28 Executed on August 11, 2004, at Newport Beach, California.

29 

30

Gretchen Crumpacker

1 In re Monk
2 Bankruptcy Case No. SA03-15457-RA

3 SERVICE LIST

4 Debtor

5 Naomi V. Monk
6 1845 Monrovia Avenue #44
7 Costa Mesa, CA 92627

Attorney for Debtor

Richard F. Weiner
611 West Sixth Street #1600
Los Angeles, CA 90017

8 Chapter 7 Trustee

9 Karen Sue Naylor
10 P.O. Box 504
11 Santa Ana, CA 92702-0504

U.S. Trustee

United States Trustee
411 West Fourth Street #9041
Santa Ana, CA 92701

12 Lienholder

VIA CERTIFIED MAIL

13 Citimortgage Inc.
14 P.O. Box 790001 M5301
15 St. Louis, MO 63179-0001

Attorney for Neale Estate

VIA CERTIFIED MAIL

Joel G. Schwartz, Esq.
19925 Stevens Creek Boulevard
Cupertino, CA 925014-2358

16 All Creditors

17 Internal Revenue Service
18 Insolvency Group 1 Mailstop 5501
19 24000 Avila Road
20 Laguna Niguel, CA 92677

PCFS Mortgage Resources
4221 International Parkway #15
Atlanta, GA 30354

21 Beneficial California Inc.
22 6939 Indiana Avenue #A
23 Riverside, CA 92506

Citimortgage Inc.
P.O. Box 790001 M5301
St. Louis, MO 63179-0001

24 AT&T Universal Card
25 Card Service Center
26 P.O. Box 6077
27 Sioux Falls, SD 57117-6077

Bank of America
P.O. Box 2493
Norfolk, VA 23501

28 Capital One Services
P.O. Box 85015
Richmond, VA 23285-5015

Chase Bank Card Services Inc.
P.O. Box 52188
Phoenix, AZ 85072-2188

29 Choice Visa
30 P.O. Box 6248
31 Sioux Falls, SD 57117

Discover Card Financial Services
P.O. Box 3008
New Albany, OH 43054-3008

32 Bank One
33 P.O. Box 15548
34 Wilmington, DE 19886-5548

Household Bank
c/o Eskanos Adler PC
2325 Clayton Road
Concord, CA 94520

35 Household Bank
36 Retail Services
37 P.O. Box 703
38 Wooddale, IL 60191-0703

AAA Financial Services
P.O. Box 15026
Wilmington, DE 19850-5026

1 Card Service Center
P.O. Box 9201
2 Old Bethpage, NY 11804

Bank of America
c/o Eskanos Adler
2325 Clayton Road
Concord, CA 94520

3
4 Account Solutions Group
P.O. Box 628
Buffalo, NY 14240-0628

The Bureaus Inc.
1717 Central Street
Evanston, IL 60204

5
6 Attention LLC
P.O. Box 210000
Stockton, CA 95269-9000

Palisades Collection LLC
P.O. Box 1274
Englewood Cliffs, NJ 07632

7
8 Ecast Settlement Corporation
P.O. Box 35480
Newark, NJ 07193-5480

Employment Development Department
Bankruptcy Group MIC92E
P.O. Box 826880
Sacramento, CA 94280-0001

9
10 Franchise Tax Board
Attn: Bankruptcy
11 P.O. Box 2952
Sacramento, CA 94280-0001

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CERTIFICATE RE NOTICE

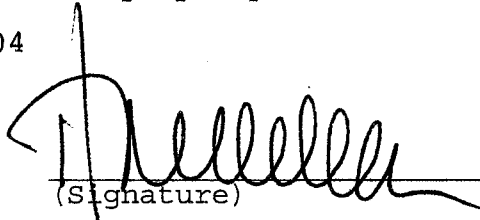
The undersigned [☒] Attorney or (☐) Movant] hereby certifies that:

1. The entities served as set forth in the annexed proof of service are all of the entities required by applicable law to be served with the pleading(s) referred to therein; and

2. The names and addresses of such entities set forth in the annexed proof of service are their correct names and addresses according to the records of the United States Bankruptcy Court for the case specified below in which such proof of service is to be filed.

The undersigned hereby acknowledges that this Certificate is filed in compliance with Bankruptcy Rule 9011(a) and may be relied upon by the Bankruptcy Court for the purpose of determining whether each pleading which is the subject of such proof of service has been properly served.

DATED: August 11, 2004


(Signature)

Hydee J. Mulichak
(Name, typed or printed)

CASE NAME: In re Naomi V. Monk

CASE NO.: SA03-15457-RA

NOTICE OF PROCEDURES FOR MOTIONS BEFORE JUDGE ALBERTS

1. The form Certificate Re Notice on the reverse side of this Notice **must** be completed by Movant's attorney (or, if Movant is not represented by an attorney, by Movant), appended to and filed with the Proof of Service for the Motion. The Certificate Re Notice form for all E-filed motions shall be filed at the time of the E-filing.

2. Movant is to bring to the hearing completed Notice Of Entry forms and postage-paid, addressed envelopes necessary to enable the Court Clerk's office to give notice of entry of the Order respecting the Motion in accordance with Federal Rule of Bankruptcy Procedure 9022 and Local Bankruptcy Rule 9021-1(1)(a)(v).

3. The Notice Of Entry forms are to be entitled "Notice Of Entry Of Order Re (insert name of motion here)". Where applicable, please include the following information on the Notice Of Entry forms: names of Debtor(s), Movant, Respondent, Plaintiff, Defendant, bankruptcy case number, adversary number and date of hearing. Please attach a complete service list and complete set of addressed, postage-paid mailing envelopes to the Notice Of Entry forms. Please submit an original and enough copies of the Notice of Entry Forms for each entity entitled to notice of entry.

4. Unless otherwise announced by the Court at the hearing, the Court will prepare the orders respecting all motions determined by Judge Alberts.

5. In all stay relief motions involving foreclosure of real estate, Movant, IN THE MOTION PAPERS, is to provide the relevant county recorder's recorded document number for the deed of trust or mortgage sought to be foreclosed.

6. In all stay relief motions involving foreclosure of tangible personal property, Movant, IN THE MOTION PAPERS, is to provide the legal description (e.g. vehicle identification number or vessel registration number), if any, of such property.

7. For all motions requiring notice to the debtor, the trustee, and all creditors, movant is encouraged to attach to the proof of service a current copy of the master matrix as the service list for the motion. A copy of the master matrix is available either through pacer or at the Intake Desk on the 2nd floor of the Bankruptcy Court located at 411 W. Fourth Street, Santa Ana, CA.

8. Copies of this Notice must be served with the Motion.

9. Motions to which nowritten, timely opposition has been served and filed may be included by the Court on default calendars, which are announced, called and granted at the beginning of each calendar call, in advance of contested motions scheduled for the same time, if the relief requested in such motions is relief to which the Court determines the Movant is clearly entitled under applicable law.

10. All proposed Orders, other than those specifically set forth in FRCP 58(A), must be set forth on a separate document. Any and all proposed orders submitted to the court which contain findings of fact or conclusions of law or do not otherwise conform with Bankruptcy rule 9021 and FRCP 58 shall be rejected.

FAILURE TO COMPLY WITH THE FOREGOING MAY RESULT IN CONTINUANCE
OF THE HEARING OR DENIAL OF THE MOTION